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Refund
05-29-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Wescott, et al.	Group Art Unit:	1645
Serial No.:	10/034,974	Examiner:	(not yet assigned)
Filing Date:	December 21, 2001		
Entitled:	FIBRIN BINDING MOIETIES USEFUL AS IMAGING AGENTS		

Attorney Docket No. DYX-024.1 US

Asst. Commissioner for Patents
OFFICE OF FINANCE
Accounting Division- Refund Section
Washington, D.C. 20231

**REQUEST FOR REFUND OF OVERPAID FEE
PURSUANT TO 37 C.F.R. §1.26**

Sir:

The undersigned attorney of record hereby requests that the PTO Deposit Account of Yankwich & Associates, No. 50-0268, be credited in the amount of \$2,532.00 pursuant to the provisions of 37 CFR §1.26.

REMARKS

Applicants' attorney forwarded the above-identified application to the Patent Office for filing on December 21, 2001, along with a check for \$1,682.00 to cover filing fees (check no. 3784). Thereafter, the attorney's Deposit Account No. 50-0268 was credited with 1,396.00 (fee code 103), charged \$3,648.00 (fee code 103), and charged \$280.00 (fee code 104), all on February 8, 2002. The net additional charge to Applicants is \$2,532.00.

Copies of the canceled check no. 3784 and the February 28, 2002 Monthly Statement of Deposit Account showing these transactions are attached at Tab A.

The charges of February 28, 2002 indicate a recalculation of the number of excess claims (fee code 103) and a fee for multiple dependent claims (fee code 104). However, the undersigned attorney's review of the claims indicates that the original filing fee of \$1,682.00 was correct, representing a large entity basic filing fee (\$740.00) and excess claims fees for 8 extra independent claims ($8 \times \$84 = \672.00), 15 extra total claims ($15 \times \$18 = \270.00), and no multiple dependent claims. ($\$740 + \$672 + \$270 = \$1,682.00$.)

A copy of Claims 1-35 as originally filed is attached at Tab B. In order to assist review of the fee calculation, this claim set presents the independent claims in bold type. Claims 1, 5, 12, 16, 19, 20, 25, 26,

27, 32 and 35 are independent claims; the remaining 24 claims are dependent claims, none of them multiply dependent.

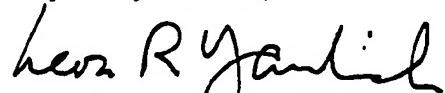
Applicants believe the discrepancy between their own calculation of claims fees and that of the OIPE stems from claims such as independent Claim 12 and similarly written claims. Claim 12 is written as follows:

- "12. A method of detecting fibrin in a mammalian subject comprising the steps of:
(a) detectably labeling a polypeptide according to any one of Claims 1-11;
(b) administering to said subject the labeled polypeptide and, thereafter,
(c) detecting the labeled polypeptide in the subject." (emphasis added)

Applicants believe that Claim 12 and other claims incorporating the emphasized phrase above have been incorrectly regarded as multiple dependent claims. Applicants respectfully submit that Claims 12, 16, 19, 20, 25, 26, 27, 32 and 35, all of which contain the recitation "according to any one of Claims 1-11" are independent claims and not multiple dependent claims as defined by 37 CFR §1.75 and MPEP 608.01(n). Specifically, these claims do not further limit another preceding claim in the present claim set. Rather, each of these independent claims recites a separate composition of matter or a separate method but incorporates or calls for the use of a polypeptide of the invention. For brevity, the polypeptide component in these independent claims has been defined by reference to the polypeptide Claims 1-11, to avoid the rote repetition in each of nine independent claims of the polypeptide subject matter defined in the first eleven claims of the claim set. The common incorporation of the terms "according to any one of Claims 1-11" in these claims does not provide a basis to classify the claims as multiple dependent claims for fee calculation purposes.

Careful consideration of the original claims reveals 8 excess independent claims and 15 excess total claims, with no multiple dependent claims. (See, Tab B.) Applicants therefore request a refund for the incorrect assessment of \$2,532.00 in excess claims fees and multiple dependent claims fees by the Patent Office. This request is being filed within two years of the filing date, December 21, 2002 and is therefore timely under 37 CFR §1.26(b).

Respectfully submitted,



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YANKWICH & ASSOCIATES

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CERTIFICATE OF MAILING BY FIRST CLASS MAIL

The undersigned hereby certifies that the items of correspondence referred to above are being deposited with the U.S. Postal Service First Class Mail under 37 C.F.R. §1.8, postage prepaid, in an envelope addressed to the Asst. Commissioner for Patents, OFFICE OF FINANCE Accounting Division - Refund Section Washington, D.C. 20231 on the date indicated below:

April 22, 2002

date of mailing and signature

Stephanie L. Leicht

Stephanie L. Leicht

3784

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CAMBRIDGE, MA 02139

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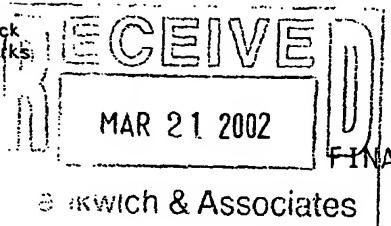
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